PUBLIC SERVICE COMMISSION

WILLIAM DONALD SCHAEFER TOWER
6 ST. PAUL STREET
BALTIMORE, MARYLAND 21202-6806
(410) 767-8000
FAX NUMBER (410) 333-6495

April 23, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MCI Petition for Delaratory Ruling
CC Docket No. 96-45

Dear Ms. Salas:

Enclosed are the original and five copies of the Maryland Public Service Commission's Comments to be filed in the above-captioned proceeding. As required by the Public Notice, the Maryland Commission also provided three copies and an electronic copy via diskette to Ms. Sheryl Todd of the Accounting Policy Division.

If you have any questions, please do not hesitate to contact me at (410) 767-8039. Thank you for your prompt attention to this matter.

Sincerely,

Susan Stevens Miller

Susan Stevens Miller
Assistant General Counsel

SSM:mc
Enclosures

No. of Copies rec'd 0+5
List ABCDE

cc: Sheryl Todd, Accounting Policy Division
International Transcription Service

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	*	
	*	**CC DOCKET NO. 96-45**
MCI PETITION FOR	*	
DECLARATORY RULING	*	
	*	

OPPOSITION TO PETITION FOR DECLARATORY RULING

Bryan G. Moorhouse
General Counsel

Susan Stevens Miller
Assistant General Counsel

Maryland Public Service Commission
6 St. Paul Street
Baltimore, Maryland 21202
(410) 767-8039

TABLE OF CONTENTS

IN THE MATTER OF
MCI PETITION FOR DECLARATORY RULING

CC Docket No. 96-45

EXECUTIVE SUMMARY

The Maryland Public Service Commission ("MDPSC") fully recognizes and supports the public policy goals of universal service embodied in Section 254, the Joint Board's Recommended Decision and the Federal Communications Commission's Universal Service Order. The MDPSC believes that continued Federal-State cooperation is essential to ensure that all markets and subscribers receive the benefits of competition. With this goal in mind, the MDPSC respectfully requests that the Federal Communications Commission deny MCI's request for authority to impose a charge on interstate customers that is based on the customers' total billed revenues, including intrastate revenues, to cover federal universal service costs. Specifically, the MDPSC contends:

- The Telecommunications Act of 1996 clearly preserves State authority under Section 152(b) of the Communications Act of 1934.
- Moreover, application of Sections 152(b) and 601 requires a narrow reading of the FCC's authority.
- An examination of the text of the statute makes it clear that the FCC lacks authority to permit MCI to base federal universal service contributions on a customers' total billed revenues, including intrastate services.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	*	
	*	**CC DOCKET NO. 96-45**
MCI PETITION FOR	*	
DECLARATORY RULING	*	
	*	

OPPOSITION TO PETITION
FOR
DECLARATORY RULING

I. INTRODUCTION

On April 3, 1998, MCI Telecommunications Corporation ("MCI" or "Company") filed a Petition for Declaratory Ruling ("Petition"), asking the Federal Communications Commission ("FCC" or "Commission") to issue a ruling, on an expedited basis, finding that "carriers are not precluded by the Universal Service Order from imposing a charge on interstate customers that is based on the customers' total billed revenues; including intrastate revenues, to recover federal universal service costs." [1]

The Maryland Public Service Commission ("MDPSC") respectfully submits these comments opposing MCI's request. The FCC lacks the authority to order or permit a carrier to recover federal universal service costs based on intrastate revenues. Permitting

[1] MCI Petition for Declaratory Ruling (filed April 3, 1998) at 1, ("Petition"), citing Federal-State Joint Board on Universal Service, Report and Order CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (rel. May 8, 1997) ("Universal Service Order").

recovery in this manner would violate 47 USC §152(b), 47 USC §601(c) and the plain language of Section 254.

II. BACKGROUND

On February 8, 1996, the Telecommunications Act of 1996 ("1996 Act") was signed into law by President Clinton. Section 254 of the 1996 Act requires the FCC, and permits state commissions, to establish a mechanism to maintain universal telephone service. At least three kinds of support are specifically enumerated in the 1996 Act: support for high cost areas; support for schools, libraries and rural health care providers; and support for low-income customers.

In Section 254, the 1996 Act provides a specific mandate to the FCC to institute a Joint Board to recommend procedures for implementing the 1996 Act's various principles regarding universal service. Pursuant to the mandates contained in the 1996 Act, the FCC issued a Notice of Proposed Rulemaking ("NPRM") on March 8, 1996. The NPRM established a Joint Board and requested comment on the implementation of various provisions of Section 254.

On November 8, 1996, the Federal-State Joint Board adopted a Recommended Decision regarding universal service.[2] In the Recommended Decision, the Joint Board made numerous recommendations on universal service issues. In addition, the Joint Board recommended that the FCC specifically seek additional information on a number of topics. On November 18, 1996. the Common Carrier Bureau issued a public notice seeking comment on the Recommended Decision.

---

[2] In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision (November 8, 1996) ("Recommended Decision").

The MDPSC filed initial comments on December 19, 1996 and reply comments on January 9, 1997. In both filings, the MDPSC strenuously argued that the FCC lacked the authority to fund federal universal service programs through a combination of interstate and intrastate revenues.

On May 8, 1997, the FCC issued its Universal Service Order. With regard to its scope of authority over universal support mechanisms, despite the objections of the MDPSC, as well as numerous other parties, the FCC concluded that:

> . . . Though section 254 grants the Commission the authority to assess contributions for rural, insular, and high cost areas and low income consumers from intrastate as well as interstate revenues and to require carriers to seek authority from states to recover a portion of the contribution in intrastate rates, we decline to exercise the full extent of our authority . . .[3] Universal Service Order, ¶807.

The FCC further stated:

> The third dimension to our inquiry is whether carriers may recover their contributions to the universal service support mechanisms through rates for interstate services or through a combination of rates for interstate and rates for intrastate services. The Joint Board did not address this question. Because the Joint Board did not recommend that we authorize carriers to recover their contributions via rates for intrastate services, we conclude that at least for the present we should maintain our traditional method of providing for recovery, which permits carriers to recover their federal universal service contributions through rates for interstate services only. As described below, we believe that this approach will best promote the continued affordability of basic residential service. For the same reason, i.e., to maintain and promote the affordability of basic residential service, we also are declining to create a single interstate fee that would be paid by basic residential dialtone

[3] This decision was "intended to promote comity between the federal and state governments and is based on [the FCC's] respect for the states' historical expertise in providing universal service." Id.

> subscribers. We will, however, continue to seek **guidance from the Joint Board** as to whether carriers should be required to seek state authorization to recover a portion of the universal service contribution in intrastate rates, rather than in interstate rates alone. Id. at 809. (Emphasis Added)

Thus, the FCC concluded that it has jurisdiction to assess contributions for the universal service support mechanisms from intrastate as well as interstate revenues and to require carriers to seek state (and not federal) authority to recover a portion of the contribution in intrastate rates.[4] The FCC declined to exercise this jurisdiction with respect to the assessment and recovery of contributions to the universal service mechanisms for rural, insular and high cost areas and low income consumers.[5] Instead, the FCC assessed contributions to these mechanisms based solely on interstate revenues.[6] With respect to recovery of those contributions, the FCC continued the approach of permitting carriers to recover contributions through rates for interstate services only.[7]

However, with respect to the universal service support mechanisms for schools and libraries and rural health care providers, the FCC determined that these mechanisms should be funded by contributions based on both the intrastate and interstate revenues of interstate telecommunications service providers.[8] Currently, the FCC has limited recovery of these contributions solely to rates for interstate service.[9]

To summarize, the FCC concluded that Section 254 provides the Commission with the jurisdiction to assess contributions for universal service support mechanisms

---

[4] Universal Service Order, 12 FCC Rcd. at 9192, ¶813.
[5] Id.
[6] Id. at 9200, ¶831.
[7] Id. at 9198, ¶825.
[8] Id. at 9203, ¶837.
[9] Id. at 9203, ¶837-838.

from both interstate and intrastate revenues, as well as to require carriers to seek authority from states to recover a portion of the contribution in intrastate rates.[10] Various parties argued in comments filed with the FCC that this decision exceeds the Commission's jurisdiction and violates 47 USC §152(b). Some of these parties have raised this issue on appeal.[11]

MCI's request takes this jurisdictional error one step further. Allowing the carriers to collect from intrastate ratepayers obliterates the line created by Section 2(b). States exercise exclusive jurisdiction over intrastate rates. To the extent that MCI's surcharge would be based on retail intrastate revenues, this charge would effectively change intrastate rates without authority.

III. ARGUMENT

Contributions to the Federal Universal Service Fund Must Be Based Solely on the INTERSTATE Revenues of Interstate Carriers.

The 1996 Act establishes competition in all communications markets as a national policy goal and outlines the respective responsibilities of the state commissions and the FCC to implement the policies necessary to achieve these national goals. In addition to endorsing competition in the communications market, the 1996 Act calls for consumers in all regions of the county to have access to telecommunications and information services at rates that are reasonable compared to those in urban areas.

---

[10] Id. at 9197, ¶823.
[11] See, Texas Office of the Pub. Util. Counsel vs. FCC, No. 97-60421 (5th Cir.)

At the state level, ensuring universal service is an important policy goal. One method of ensuring universal service is by means of a state universal service fund. State interest in universal service did not originate with the 1996 Act. Several states have had universal service funds in place for some time.

As noted earlier, on May 8, 1997, the FCC issued its Universal Service Order, addressing how universal service funds should be collected and distributed. With regard to these issues, the FCC concluded that Section 254 provides the Commission with the jurisdiction to assess contributions for universal service support mechanisms from both interstate and intrastate rates.

The position of the MDPSC was aptly summarized by a dissenting Joint Board member:

> The jurisdiction between the Commission and the states is distinct. The Commission possesses authority to assess interstate revenues, while State commissions have authority to utilize intrastate revenues. To recommend that the Commission utilize intrastate revenues is certainly beyond the scope of its jurisdiction.[12]

Section 2(b) of the Communications Act of 1934 ("1934 Act") (47 U.S.C. §152(b)) creates a system of dual federal-state regulation for telecommunications. At its core, the Communications Act establishes federal authority over interstate communications services while protecting state jurisdiction over intrastate services. Section 2(b), as well as Sections 254 and 601(c) of the 1996 Act, all support the conclusion that the FCC lacks the authority to base contributions to the federal universal

[12] Separate Statement of Commissioner Schoenfelder, member of the Joint Board. See also, Separate Statement by commissioner McClure.

service fund on intrastate revenues. Any conclusion to the contrary would nullify Section 2(b) of the 1934 Act, which is still in full force and effect.

The intrastate exception to the FCC authority was not altered by the 1996 Act.[13] Section 2(b) of the 1934 Act was not amended by the 1996 Act and still provides an express limitation on the FCC's jurisdiction that "nothing in this Act shall be construed to give the Commission jurisdiction with respect to: charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communications services by wire or radio of any carrier." 47 U.S.C. Section 152(b) (Emphasis Added). By its terms, this provision removes intrastate matters from the FCC's reach, resulting in the dual regulatory system we know today. The Supreme Court has explained that by this section the Communications Act "not only imposes jurisdictional limits on the power of a federal agency, but also . . . provides its own rule of statutory construction." Louisiana PSC v. FCC, 476 US 355, 377, n. 5 (1986). By "fencing off" regulation of intrastate matters, Section 2(b) establishes the Communications Act's system of dual regulation for telecommunications. While there are exceptions to Section 2(b)'s jurisdictional limitations, these exceptions are explicit.[14] Section 254 is not included in this limited group of exceptions and nothing in either the 1934 Act nor the 1996 Act exempts Section 254 from the operation of Section 2(b). Thus, the statutory prohibition against the FCC's exercise of jurisdiction over intrastate communications is applicable to Section 254.

[13] It should be noted that the traditional "interstate" limitation of the FCC also remains unchanged by the 1996 Act. 47 USC §151(b).

[14] Examples of unambiguous and straight forward mandates by Congress granting the FCC authority over intrastate matters are evidence in Sections 251(e)(1), 253, 276(b) and 276(c). In these sections Congress specifically directed the FCC to preempt the states under certain circumstances.

The Louisiana Supreme Court held that the specific limitation on the FCC's jurisdiction contained in Section 2(b) supersedes other parts of the Communications Act which may confer undifferiented grants of substantive authority on the FCC. In Louisiana, the FCC argued that it could require states to follow federal depreciation rules for purposes of intrastate ratemaking because Section 220 authorized the Commission to set depreciation rates and did not expressly prohibit the applicable of such rates to intrastate pricing.

The Supreme Court reached a contrary result, ruling that the FCC was powerless to extend its rules into the intrastate context. Specifically, the Supreme Court stated:

> While it is, no doubt, possible to find some support in the broad language of the [depreciation provision] for [the FCC's] position, we do not find the meaning of the section so unambiguous or straight forward as to override the command of Section 152(b) that "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction" over intrastate service. Louisiana, at 377.

Thus, the Supreme Court held that the FCC could not take action to advance a broad federal policy where the effect of this action is to disregard Section 2(b)'s express jurisdictional limitation. Id. at 374-375.

The analogy of the Louisiana case to the present situation could not be more clear. Just as Section 220's general grant of authority over depreciation rates did not empower the FCC to regulate intrastate aspects of depreciation, Section 254's authorization to establish a universal service fund does not permit the FCC to assert jurisdiction over intrastate revenues in implementing that fund. Under Louisiana, it is irrelevant that

Section 254 does not by its terms forbid the FCC from exercising authority over matters relating to intrastate service.

Nothing in the 1996 Act nor in the Joint Explanatory Statement of the Committee of Conferences ("Explanatory Statement") supports the conclusion that the FCC has authority to utilize intrastate revenues in determining a carrier's contribution to the federal universal service fund. To the contrary, Section 254 simply replicates the general scheme of the dual regulatory system that characterizes the Communications Act as a whole. The 1996 Act reinforces this dual system, it does not negate it. In the present situation, Congress simply has not granted the FCC authority to use intrastate revenues to fund federal universal service programs.

Section 254 itself supports the conclusion that the FCC lacks jurisdiction to assess intrastate revenues. The structure of this section actually prohibits the FCC's use of intrastate revenues. The 1996 Act requires that funding for the federal program be derived from "every telecommunications carrier that provides interstate service." 47 U.S.C. §254(d). (Emphasis Added) This provision authorizes the FCC to establish a federal universal service fund subsidized by interstate carriers only. Further support for this interpretation is found in the contrasting language relating to state universal service programs. Section 254(f) carefully preserves state authority to create support mechanisms not inconsistent with any federal program and leaves to the states the regulations of intrastate carriers. This subsection specifically states:

> Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determine by the State to the preservation and advancement of universal service in that State. 47 USC §254(f) (Emphasis Added)

When these requirements are read together, it is clear that Congress intended the specific reference to interstate carriers to mean that a distinction should be make for a separate federal support mechanism. Both the language and the structure of Sections 254(d) and 254(f) indicate that Congress intended both the federal and state governments to have complimentary, but separate, roles in providing universal service.[15]

Congress has made it clear that there is a distinction between the federal and state universal service programs. Thus, this same distinction should follow the contributions for these programs. The authority to utilize intrastate revenues as a base for contributions rests solely with the individual state commissions.[16] Section 254(f) anticipates the state universal service programs should complement the federal program, not compete with it. Only interstate revenues should be utilized for funding the federal universal service programs, allowing intrastate telecommunications revenues to be used for funding the complementary state universal service programs.

Section 254(h) further supports the contention that Congress had no intention of altering the dual federal and state roles. This provision expressly obligates states to determine the rates which schools and libraries would pay for discounted intrastate services.[17] "The discount shall be an amount that the Commission, with respect to interstate services, and the states, with respect to intrastate services, determine is

---

[15] The Explanatory Statement also supports this conclusion. Congress expressly stated that "[s]tate authority with respect to universal service is specifically preserved under new Section 254(f). Id. at 132.

[16] Courts have required that regulatory agencies maintain jurisdictional distinctions when using carrier revenues to support the costs of a particular service. AT&T v. PSC, 625 F. Supp. 1204 (D. Wyo. 1985).

[17] Section 254(k) similarly provides an express division of authority between "the Commission, with respect to interstate services, and the states, with respect to intrastate services" regarding cost allocation rules and accounting safeguards. 47 USC §254(k).

appropriate and necessary to ensure affordable access to and use of such services by such entities." 47 USC §254(h). (Emphasis Added). Section 254(h) provides no specific authority to overturn Section 2(b)'s prohibition. Rather, this subsection indicates that Congress envisioned a separate state fund, which must draw on intrastate revenues.

Moreover, the approach espoused in the Universal Service Order is directly prohibited by Congress. Section 601(c) of the 1996 Act clarifies that the 1996 Act "shall not be construed to modify, impair, or supersede Federal State, or local law unless expressly so provided in such Acts or amendments." Through the enactment of Section 601(c), Congress has mandated that any change to the traditional dual regulatory scheme should be based on the express provisions of the 1996 Act. Furthermore, Congress, through Section 601(c) emphasized that modification of Federal or State law should not be implied based upon corollary provisions or by inference.

Finally, legislative history also supports the conclusion that Congress did not intend to grant the FCC authority to utilize intrastate revenues. Originally, both HR 1555 and S. 652 contained a revision of Section 2(b) which would have altered FCC authority. See, S. 652 Rep. No. 1014-230 at 78; and HR 1555 Rep. No. 104-204 at 53. However, the final version of the 1996 Act did not contain this amendment. Statutory construction principles place great weight on the fact that Section 2(b), at one point, was amended by this legislation but ultimately was restored to its original form. These actions indicate that Congress considered whether the FCC's authority should be expanded but decided that the Commission's traditional authority should be maintained. Clearly, Congress was fully aware of the existence of Section 2(b) when it passed the 1996 Act and could have expressly granted the FCC authority to assess intrastate rates, but chose not to do so.

Thus, the 1996 Act preserves Section 2(b) and the State's exclusive authority over intrastate revenues. Given that Congress specifically declined to amend Section 2(b) and included Section 601(c) in the 1996 Act, the logical conclusion is that Congress intended the language contained in Section 254(d) to serve as a limitation on the revenues that can be charged to support federal universal service, as well as a designation of the carriers who can be required to contribute.

The Universal Service Order provides no legal rationale for the conclusion that the interstate/intrastate distinction has been abrogated.[18] The FCC relies on general statements contained in Section 254 to justify its abrogation of Section 2(b). According to the FCC, the fact that Section 254 provides for the establishment of both federal and state high cost support mechanisms; authorizes the FCC to define the parameters of universal service and requires that the FCC establish support mechanisms which are "specific, predictable and sufficient" to meet the statutory principle of "just, reasonable and affordable rates" justifies its conclusion that the scope of the FCC's jurisdiction extends to assessment of contributions based on a carriers intrastate revenues.[19]

The FCC also dismissed Section 2(b)'s prohibition by finding that this provision is only implicated where the competing statutory provision is ambiguous and that Section 254's express directive that universal service mechanisms be "sufficient" ameliorates any

---

[18] As early as 1930, the Supreme Court recognized the importance of the interstate/intrastate distinction, stating:

> The separation of the intrastate and interstate property, revenues, and expenses of a company is important not only as a theoretical allocation to two branches of business. It is essential to the appropriate recognition of the competent governmental authority in each field of regulation. Smith v. Illinois Bell Tel. Co., 282 U.S. 133 (1930).

[19] Universal Service Order, 12 FCC Rcd. at 9192, ¶814.

Section 2(b) concerns.[20] Finally, the FCC contended that Section 254 blurred the traditional distinction between the interstate and intrastate jurisdiction spheres, thus justifying the FCC's expansive view of its jurisdiction.[21]

The FCC raised these same contentions to support its claim that the Commission had jurisdiction to issue pricing rules governing the determination of intrastate interconnection rates. On August 8, 1996, the FCC released its order on local competition. In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15,499 (1996) ("Interconnection Order") In its Interconnection Order, the FCC found that general statements in Sections 251, 252 and 253 of the 1996 Act required it to establish rules to govern intrastate prices. The FCC asserted that the 1996 Act created a "parallel" jurisdictional scheme for the FCC over both interstate and intrastate matter under Sections 251 and 252. Finally, the FCC contended that Section 152(b) did not preclude FCC regulations governing intrastate matters.

The Eighth Circuit disagreed with the FCC's contentions, finding that the absence of any direct FCC authority over local telephone service was fatal to the Commission's theory that the 1996 Act permits the FCC to issue intrastate pricing rules. Iowa Utilities Board v. FCC, 120 F. 3d 753, 795 (8th Cir. 1997), cert. granted, 118 SCT. 879 (1998). According to the Eighth Circuit, the FCC's interpretation of the 1996 Act did not demonstrate the "unambiguous grant of intrastate authority to the FCC required either to

---

[20] Id., 12 FCC Rcd, at 9196, ¶822n. 2094.

[21] The general theme of the Universal Service Order is that the FCC's foray into universal service is a recent phenomenon warranting an end to the interstate/interstate paradigm. However, the Commission has provided universal support for high cost areas and low-income consumers for years. The only aspect of Section 254 which is truly new is the funding for schools, libraries and rural health care providers. In essence, Section 254 is simply a codification of the past practices of both the FCC and the state commissions.

jump over or pass through Section 2(b)'s fence." Id. at 797, citing Louisiana, 476 US at 376-77 n.5.[22]

Applying the Eight Circuit's analysis of Section 2(b) in the universal service context, the FCC's conclusion that Section 254 grants the Commission authority to assess intrastate revenues also must be found to be erroneous. The rule derived from both the Louisiana and Iowa Utilities Board decisions is that the FCC does not have authority to regulate in those areas fundamentally involving local intrastate telecommunications service absent an unambiguous grant of such authority from Congress.[23]

As found by the Eighth Circuit, a federal statutes' mere application to intrastate telecommunications matters is insufficient to confer interstate jurisdiction upon the FCC. The statute also must directly grant the FCC such intrastate authority in order to overcome the operation of Section 2(b). No provision of Section 254 authorizes the FCC to regulate intrastate telecommunications service. The FCC expansive view of its authority under Section 254 in contrary to the principles espoused in Louisiana and Iowa Utilities Board and is contradicted by the language, structure and design of Section 254 itself.

---

[22] The Eighth Circuit not only found that Section 2(b) prohibited the FCC from issuing pricing rules applicable to intrastate interconnection arbitrations, the Court also found that the FCC exceeded its jurisdiction by establishing additional standards that the state commissions were to follow in determining the rural exemption. Furthermore, the Eighth Circuit found that the FCC lacked the authority to review or enforce agreements approved by state commissions. Finally, the Court also prohibited the FCC from determining which interconnection agreements must be submitted to the state commission for approval. Id. at 801-805.

[23] In the Universal Service Order, the FCC incorrectly described Section 2(b) as being implicated only when the competing statutory provision is ambiguous. 12 FCC Rcd. at 9196 ¶822 n. 2094. The Commission set forth the same theory of statutory interpretation in Iowa Utilities Board. The Eighth Circuit found, contrary to the FCC's contention, that Section 2(b) is a rule of statutory construction commanding that nothing in the Act shall be construed to extend FCC jurisdiction to intrastate telecommunications. Id. at 796-797.

Under the FCC's interpretation, virtually all providers of telecommunications services would be required to pay into the federal fund. All local exchange carriers provide interstate access. Thus, under the FCC's Universal Service Order, their revenues from intrastate services would be used to fund the federal program. If Congress had intended that the intrastate revenues of all carriers would be used to fund federal universal service programs, there would be no reasons to use the word "interstate" in identifying those services subject to the federal fund. The FCC's interpretation renders the entire clause meaningless.[24]

Congress clearly intended the 1996 Act to preserve state authority over universal service matters within the State. Utilizing intrastate revenues to fund the federal universal service programs will negatively impact state programs. Applying the federal surcharge to intrastate revenues will unfairly shift most of the burden of funding interstate universal service to local telephone rates. State commissions should not be hindered in developing their own viable state programs. Therefore, intrastate revenues should not be assessed, as such revenues are designed for complementary state universal service programs, not the federal fund.[25] By applying the federal universal service surcharge only to interstate revenues, the FCC would preserve the authority of the states to fund state universal service objectives through a separate surcharge on state telecommunications revenues.

---

[24] See, e.g., In the Matter of Merchants Grain, 93 F.2d 1347, 1353-1354 (1996) (A statute must be read in a manner that assigns meaning to each word and renders no words superfluous.)

[25] Furthermore, such recovery clearly is discriminatory insofar as it assesses intrastate contributions only from those carriers that provide both interstate and intrastate services. Carriers providing intrastate but not interstate services cannot be required to contribute under the 1996 Act.

IV. CONCLUSION

The 1996 Act does not abrogate the dual regulatory system, but affirms it. In reviewing the 1996 Act, it is clear that no abrogation was intended. The approach adopted in the Universal Service Order and requested by MCI represents an attempt to rewrite the 1996 Act and remove Section 2(b) from the Telecommunications Law. This approach is wholly inconsistent with Congressional intent and legislative history. To the contrary, the 1996 Act generally repudiates this approach. Furthermore, the 1996 Act is quite clear in granting the FCC authority over intrastate matters where it intended to do so, and no clear expression of authority is contained in Section 254. While the 1996 Act does alter narrow aspects of state and federal jurisdiction by granting the FCC rulemaking jurisdiction over matters historically regulated by the states in limited and clearly specified instances, the 1996 Act does not fundamentally alter the prohibition against FCC regulation of intrastate matters under Section 152(b).

In sum, there is no indication that Congress intended to alter the current jurisdictional responsibilities between federal and state governments over interstate and intrastate revenues. The 1996 Act contains no explicit authorization for the FCC to impose a charge for universal service on the intrastate revenues of interstate carriers. Absent such an explicit grant of authority, the FCC cannot impose any assessment on intrastate revenues. Section 254(d) when read in conjunction with Sections 2(b) and 254(f) limits the FCC's authority to interstate revenues. The 1996 Act does not nullify Section 2(b) of the 1934 Act. If anything, the 1996 Act is an affirmation that Congress intended to retain a dual system of regulation. The conclusion that the FCC has the

authority to utilize intrastate revenues in any manner is incorrect and not supported by legal precedent.

The MD PSC looks forward to continuing to work with the FCC to ensure that our mutual goal of universal service is achieved. For the foregoing reasons, the MDPSC respectfully requests that this Commission deny MCI's request for a declaratory ruling and affirmatively state that the FCC lacks the jurisdiction to permit carriers to impose a charge based on the customers' total billed revenues, including intrastate revenues, to recover federal universal service costs.

Respectfully submitted,

Bryan G. Moorhouse/sm
Bryan G. Moorhouse
General Counsel

Susan Stevens Miller
Susan Stevens Miller
Assistant General Counsel

Public Service Commission of
Maryland
6 St. Paul Street
Baltimore, Maryland 21202
(410)767-8039